IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 88 OF 2006

SHRI SHIVDAS KRISHNANATH VERNEKAR AND 2 ORS., ...Appellants

Versus

SHRI RAJARAM ATMARAM POLE (SINCE DEC.) THROUGH HIS L.RS. ....Respondent

Mr. Dajvip V. Patkar, Advocate for the appellants.

Mr. H. D. Naik, Advocate for the respondents No.1(a) to 1(m).

Coram:- S.A.BOBDE, J.

Date:- 7th March, 2007

P.C.

This second appeal is preferred against the Judgment and Decree dated dated 25/1/2006 passed by the 1st Ad hoc Additional District Judge, at Panaji in Regular Civil Suit No.63/2002. A single point for determination was formulated by the learned District Judge, which reads thus :

> Whether the defendants were in possession of the suit property on the date of institution of the suit ?

This has been answered in the negative. The learned Counsel for the appellants submitted that there are contractory findings in the Judgment in appeal. According to the learned Counsel, the learned District Judge has also given finding to the effect that the defendants are in possession. There is no merit in this contention. The observation relied on by the learned Counsel for the appellants only describes the fact that the appellants used to enter the property for tapping the trees and that too without any title to the property. There is, thus, no contradiction.

2. Moreover, the question whether a party is in possession or not, is a pure question of fact and does not give rise to any substantial question of law, as has been held by the Apex Court in Mohan Lal vs. Nihal Singh., reported in AIR 2001 SC 2942. There is no merit in the appeal. It is, hereby, dismissed.

S.A.BOBDE, J.

ssm.